

Case Summary

Appellant-Defendant Ronald Holley (“Holley”) appeals his conviction for Unlawful Possession of a Firearm by a Serious Violent Felon, a Class B felony.¹ We affirm.

Issue

Holley raises a single issue for review: whether the evidence is sufficient to support his conviction.

Facts and Procedural History

On February 18, 2006, at approximately 3:20 a.m., Fort Wayne Police Detective Delonzo Myles (“Detective Myles”) was patrolling near St. Croix and Hobson Road when he saw a dark-colored Ford Mustang weaving in and out of lanes, forcing other cars to stop or swerve. Detective Myles activated his emergency lights. When an intervening car moved out of the way, Detective Myles was able to see that the Mustang was occupied by a driver and a front-seat passenger. The driver was wearing a beige hat.

The Mustang accelerated and proceeded through a red light. It eventually came to a stop when it ran up over a curb at Hobson and Lake streets. Because of snow and dust, Detective Myles did not see the occupants exit. However, when he approached the Mustang, there were no occupants. The car was still running, but the front tires were flat and the front seat air bags had deployed. During his inspection of the Mustang interior, Detective Myles found a .44 Magnum on the driver’s side floorboard and a Highpoint .40 caliber handgun on the passenger’s side floorboard.

A canine unit composed of Officer Richard Jennings (“Officer Jennings”) and his dog

Chico was dispatched to search for the former occupants of the Mustang. Chico proceeded to an area of thick brush, where he picked up a “tan Carhart knit hat.” (Tr. 193.) Officer Jennings took the hat and signaled Chico to continue the search. Chico’s tracking led him to a small detached garage. The garage door had a broken bottom panel through which Chico tried to gain entry. Officer Jennings noticed that the “doors [had] been busted in” and called out a canine warning. (Tr. 194.)

Officer Jennings pushed the garage door open and allowed Chico to go inside. A young black male dressed in “Carhart ... farmer john type overalls” called out “I’m in here” and put his hands up. (Tr. 196.) He identified himself as Dywan Masterson (“Masterson”). A second person, identified as Holley, came out without incident. Officer Jennings gave the Carhart hat to Masterson, who took the hat without objection.

On February 24, 2006, the State charged Holley with Unlawful Possession of a Handgun by a Serious Violent Felon. On June 21, 2006, Holley was tried before a jury and convicted as charged. On July 17, 2006, he was sentenced to twelve years imprisonment. Holley now appeals.

Discussion and Decision

At trial, the State proceeded on the theory that Holley was the passenger in the Mustang and had constructive control over the Highpoint .40 caliber handgun. Holley claims there is insufficient evidence to support his conviction for Possession of a Handgun by a Serious Violent Felon. More specifically, he argues that the State failed to present sufficient

¹ Ind. Code § 35-47-4-5.

evidence that he was the Mustang passenger and had the intent to maintain control over the handgun recovered from the passenger floorboard.

To convict Holley as charged, the State was required to show that he had previously been convicted of a serious violent felony and knowingly or intentionally possessed a handgun. Ind. Code § 35-47-4-5. Holley and the State stipulated that Holley had a prior felony conviction defined as a serious violent felony in subsection (b). Thus, the State needed to prove only that Holley knowingly or intentionally possessed a handgun.

When reviewing a claim of insufficiency of the evidence, we consider only the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. Dillard v. State, 755 N.E.2d 1085, 1089 (Ind. 2001). We do not reweigh evidence or assess witness credibility. Id. The conviction will be affirmed unless we conclude that no reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. Clark v. State, 728 N.E.2d 880, 887 (Ind. Ct. App. 2000), trans. denied.

A conviction for possession may rest on proof of actual or constructive possession. Bradshaw v. State, 818 N.E.2d 59, 62 (Ind. Ct. App. 2004). A person actually possesses an item when he or she has direct physical control over it. Id. In order to prove constructive possession, the State must show that a defendant had both the intent and capability to maintain dominion and control over the contraband. Id. Proof of dominion and control may be shown, inter alia, by (1) incriminating statements made by a defendant; (2) attempted flight or furtive gestures; (3) proximity of contraband to the defendant; (4) location of the contraband within the defendant's plain view; or (5) the mingling of the contraband with

other items owned by the defendant. Id. at 62-63 (citing Henderson v. State, 715 N.E.2d 833, 836 (Ind. 1999)).

When constructive possession is alleged, the State must demonstrate the defendant's knowledge of the contraband. Id. at 63. Such knowledge may be inferred from the exclusive dominion or control over the premises containing the contraband or, if the control is nonexclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. Id. Moreover, while an accused must have actual knowledge of the presence of the item and its character, this knowledge can be inferred from the fact that the item was found in a place under his dominion and control. Id. (citing Taylor v. State, 482 N.E.2d 259, 261 (Ind. 1985)).

In Taylor, our Supreme Court found sufficient evidence to support a conviction for handgun possession without a license where the handgun was observed between passenger Taylor's feet and Taylor was in the "primary position to gain actual control of the weapon." 482 N.E.2d at 261. In Bradshaw, there was sufficient evidence to establish possession of a handgun where the handgun was located beneath the passenger seat in which Bradshaw was sitting, Bradshaw made furtive movements, and he also attempted to flee when the handgun was discovered. 818 N.E.2d at 63.

Here, the State presented evidence that Detective Myles followed two men in a Mustang. The men fled after the Mustang crashed. Officer Jennings testified that his canine Chico tracked a scent from the Mustang to a garage about 400 yards away. During the tracking process, Chico found footprints and a tan Carhart hat. At the garage, Officer

Jennings observed indications that the door had been broken. It was a very cold day and there was no source of heat in the garage. The individuals inside did not immediately respond to Officer Jennings' calls but waited until the canine was released before responding. There is sufficient evidence from which the jury could infer that the men inside the garage were the former occupants of the Mustang. Moreover, Detective Myles testified that he observed the Mustang driver wearing a beige hat and Officer Jennings testified that Masterson (who was wearing Carhart work clothes) took the Carhart tan hat without protest. Thus, there is evidence from which the jury could infer that Masterson was the driver and Holley was the passenger.

As the passenger, Holley was in a superior position to exert control over the handgun located in the passenger floorboard. Also, he fled from Detective Myles and hid in a nearby garage. Accordingly, the State presented sufficient evidence to show Holley's constructive possession of a firearm.

Affirmed.

VAIDIK, J., and BARNES, J., concur.